

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA       :**

**VS.                                       : CRIMINAL NO. 09-00034-KD**

**MICHAEL A. ALLEN                       :**

**ORDER**

On May 12, 2009, this action came on for a pretrial conference. The attendees were Federal Public Defender Carlos Williams, on behalf of the Defendant, Michael Allen, and Assistant United States Attorney Gina Vann. During the conference, counsel announced that they were not prepared for trial and requested a continuance into the July, 2009 criminal term. The oral motion for a continuance of the trial term, presented during the pretrial conference, is before the undersigned for disposition pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Rule 72.2(b)(2).

A careful review of the motion and the record in this matter clearly reveals that the motion is due to be GRANTED in order that the Defendant and his attorney will be afforded an adequate period of time within which to fully litigate the production of documents from a non-party that are arguably necessary to a defense trial strategy. First, the scope of the requested subpoena is unresolved. Defendant will ask Judge DuBose to review and expand the scope authorized by Magistrate Judge Bivins in her decision of May 7, 2009

(Doc. 30). And secondly, the scope of the subpoena is not the only pre-trial hurdle faced by the Defendant. Through informal negotiations with the custodian of the records that he seeks, it is known that the production of the documents listed in the proposed subpoena will be contested. Just recently, these very issues formed the basis of a decision by Judge DuBose to continue the trial even after a jury had been empaneled on May 4, 2009 and the trial scheduled for May 18, 2009 (Doc. 33). Given the complicating factor of the non-party's opposition to even a limited production of information, it is considered more reasonable to set this matter for trial in July rather than to expect that it will be ready during the June term, as has been suggested by counsel.

For the reasons stated above, it is specifically determined that the ends of justice served by continuing the trial of this action outweigh the best interest of the public and the defendant in a trial set in June, 2009. For the purposes of the Speedy Trial Act, any delay resulting from this continuance is excludable pursuant to 18 U.S.C. § 3161(h)(8)(A).

Accordingly, this action is continued at Defendant's request into the July 2009 criminal trial term with jury selection scheduled for **June 29, 2009**. The Clerk shall refer this action to the appropriate magistrate judge for the resetting of a pretrial conference.

DONE AND ORDERED this 12th day of May, 2009.

s/WILLIAM E. CASSADY

UNITED STATES MAGISTRATE JUDGE